

## FORM FOR USE IN APPLICATIONS

FOR HABEAS CORPUS UNDER 28 U.S.C. §2254

RECEIVED

2005 JUL 29 A 9:21

LARRY EARI JONES

Name

156610

Prison Number

COVINGTON COUNTY JAIL 290 HILLCREST, DRANDALUSIA ALABAMA, 36420

Place of Confinement

MIDDLE

United States District Court

~~Covington~~

District of

ALABAMA

Case No.

2:05 cv 701-F

(To be supplied by Clerk of U. S. District Court)

LARRY EARI JONES

, PETITIONER

(Full name) (Include name under which you were convicted)

ANTHONY CLARK

, RESPONDENT

(Name of Warden, Superintendent, Jailor, or authorized person having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF

ALABAMA, TROY KING ORMATTHEWS BEAM, ESQUIRE, 11 SOUTH UNION MONTGOMERY AL. 36130, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN  
STATE CUSTODY

## INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8-1/2 x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8-1/2 x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies\* must be mailed to the Clerk of the United States District Court whose address is  
P. O. Box 711, Montgomery, Alabama 36101
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

\*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.

#### PETITION

1. Name and location of court which entered the judgment of conviction under attack CIRCUIT COURT OF COVINGTON COUNTY ALABAMA AND ALUSA
2. Date of judgment of conviction CASES STILL PENDING-DENIED TRIAL
3. Length of sentence \_\_\_\_\_ Sentencing Judge ASHLEY MCKATHAN  
CHARLES SHORT
4. Nature of offense or offenses for which you were convicted: CHARGE  
WITH 4 COUNTS POSSESSION OF DRUG PARAPHERNALIA  
AND BECAUSE OF RESIDUE HE WAS CHARGE WITH POSSESSION  
OF A CONTROLLED SUBSTANCE 4 COUNTS
5. What was your plea? (check one)
  - (a) Not guilty ☒
  - (b) Guilty ☐
  - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Kind of trial: (Check one)  
 (a) Jury ( ) DENIED OF TRIAL  
 (b) Judge only ( )
7. Did you testify at the trial? Yes ( ) No ( ) NO TRIAL
8. Did you appeal from the judgment of conviction? Yes ( ) No ( ) NO TRIAL
9. If you did appeal, answer the following:  
 (a) Name of court \_\_\_\_\_  
 (b) Result \_\_\_\_\_  
 (c) Date of result \_\_\_\_\_  
NO TRIAL  
 If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (X) No ( )
11. If your answer to 10 was "yes", give the following information:  
 (a) (1) Name of court CIRCUIT COURT OF COVINGTON COUNTY  
 (2) Nature of proceeding MOTION FOR FAST AND SPEEDY TRIAL.  
FOR WRIT OF HABEAS CORPUS PETITION  
 (3) Grounds raised DENIED OF SPEEDY TRIAL, VIOLATED THE PETITIONER SIXTH AMENDMENT, PREJUDICED PETITIONER, VIOLATED DUE PROCESS PETITIONER CLAIMS HE NEVER HAD AN 12 HOUR HEARING, THE STATE HAS VIOLATED DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENTS, FOURTH, FIFTH, SIXTH, AND EIGHTH AMENDMENTS OF THE CONSTIT  
 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (X)  
 (5) Result NO RESPONSE ON MOTION - PETITION DENIED  
 (6) Date of result DENIED 3-4-05 PETITION  
 (b) As to any second petition, application or motion give the same information:  
 (1) Name of court CIRCUIT COURT OF COVINGTON COUNTY  
 (2) Nature of proceeding MOTION FOR DISMISS INDICTMENT - WRIT OF HABEAS CORPUS PETITION  
 (3) Grounds raised DENIED OF SPEEDY TRIAL AND THE INDICTMENT SHOULD BE DISMISS BECAUSE IN CASES CC-2003-187-418-419 IS 312 DELAY IN BRING PETITIONER TO TRIAL WITHIN THE TIME LIMIT PREJUDICED HIM. THE STATES FAIL TO MAKE A GOOD FAITH EFFORT. UNITED STATES CODE SERVICE CRIMES AND CRIMINAL PROCEDURE - 2421-3530 - TITLE 18 U.S.C. CHAPTER 208 SPEED TRIAL ACT SEC 3161  
 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (X)  
 (5) Result NO RESPONSE ON MOTION - PETITION DENIED  
 (6) Date of result PETITION DENIED 4-23-05

(c) As to any third petition, application or motion, give the same information:

- (1) Name of Court CIRCUIT COURT OF CORINGTON COUNTY
- (2) Nature of proceeding PETITION FOR WRIT OF CERTIORARI - AND MOTION TO DISMISS INDICTMENT
- (3) Grounds raised DENIED OF SPEEDY TRIAL VIOLATED PETITIONER'S EQUAL PROTECTION CLAUSES AND CONSTITUTIONS RIGHTS AND SANCTION VIOLATION OF THE 90-DAY INTERIM SPEEDY TRIAL RULE. AND DISTRICT ATTORNEY VIOLATED OBTAINED BY USE OF PERJURED TESTIMONY WHICH THE PROSECUTOR KNOWS TO BE FALSE AND ALLOWS TO GO UNCORRECTED. TURNS-ON DEGREES OF BAD FAITH
- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (☒)
- (5) Result EVERY MOTION THAT PETITIONER FILE WAS DENIED
- (6) Date of result DENIED AND EVERY PETITION DENIED
- (d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:
- (1) First petition, etc. Yes (☒) No ( )
- (2) Second petition, etc. Yes (☒) No ( )
- (3) Third petition, etc. Yes (☒) No ( )
- (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: DENIAL OF SPEEDY TRIAL, HELD WAITING TO GO TO TRIAL HELD IN COUNTY JAIL WITHOUT BAIL 13 MONTHS, PREJUDICE PETITIONER.  
 Supporting FACTS (tell your story briefly without citing cases or law): PETITIONER IS IN CUSTODY UNDER AUTHORITY OF A STATE COUNTY OFFICER, BUT WHOSE CUSTODY HAS NOT BEEN DIRECTED BY THE JUDGMENT OF A STATE COURT, THE PROPOSITION THAT STATE COURT HAS DENIED PETITIONER A FAIR ADJUDICATION OF THE LEGALITY OF HIS DETENTION UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES. PETITIONER HAS BEEN DENIED A FAIR CRIMINAL TRIAL IN STATE COURT, PETITIONER WERE ARRESTED ON OR ABOUT 9-17-02 FOR THE CHARGES OF MISDEMEANOR, POSSESSION OF DRUG PARAPHENALIA, AND BECAUSE OF RESIDUE HE CHARGE WITH POSSESSION OF CONTROLLED SUBSTANCE IN CASE NUMBER CC-2003-187-418-419, AND CC-2004-347 THESE CASES HAVE BEEN CONTINUANCE 13 TIMES BECAUSE THE STATE PROSECUTOR FAIL TO INFORM THE COURT OF FACTS.
- B. Ground two: IN CASES CC-2003-187-418-419 HAS BEEN 36 MONTHS DELAY WAITING FOR TRIAL, IN CASE CC-2004-347 13 MONTHS DELAY.  
 Supporting FACTS (tell your story briefly without citing cases or law): IN CASE CC-2004-347 BAIL SET AT EXCESSIVE \$200,000 IN CASE CC-2003-187-418-419- NO BAIL, PREJUDICE THE PETITIONER, PETITIONER COULD SHOW UNCONSTITUTIONAL DEPRIVATION OF LIBERTY BY REASON OF BASIC DEFECTS IN STATE COURT PROCEEDING AND EXHAUSTION OF STATE COURT REMEDIES, PETITION FOR HABEAS CORPUS WOULD BE PROPER MEANS TO TEST VALIDITY OF THE STATE COURT JUDGMENT, THE PETITIONER DUE PROCESS WERE DENIED AND PREJUDICED BY DELAY IN BRINGING HIM TO TRIAL VIOLATED OF FEDERALLY PROTECTED RIGHTS, AND VIOLATED HIS CONSTITUTIONAL GUARANTEES OF SPEEDY TRIAL. IN CASES CC-2003-187-418-419- PETITIONER HAVE SERVED 20 MONTHS, IN CASE CC-2004-347, PETITIONER HAVE SERVED 13 MONTHS.



- C. Ground three: PETITIONER IS HARMED BY THE ERROR BECAUSE OF CONSTITUTIONAL VIOLATION  
 Supporting FACTS (tell your story briefly without citing cases or law): PETITIONER IS STILL BEING DETAINED UNLAWFULLY WITHOUT BAIL IN CASE CC 2003-187-418-419 - AND A BAIL SET IN CASE CC-2004-347 EXCESSIVE \$200,000 WHICH IS SO OUTRAGEOUS AND SO PREJUDICIAL AS CLEARLY TO CONSTITUTE DENIAL OF DUE PROCESS, JUST STRONG CONSIDERATIONS OF COMITY; PETITIONER IS BEING ILLEGALLY CONFINED AND STATE COURT ARE SLOW TO ACT, PETITIONER REQUESTS A IMMEDIATE FEDERAL RELIEF.

- D. Ground four: PETITIONER IS BEING HELD UNLAWFULL DETENTION  
 Supporting FACTS (tell your story briefly without citing cases or law): PETITIONER BEING HELD UNLAWFULL DETENTION WAITING FOR TRIAL FOR 13 MONTHS, AND WAITING FOR SAMPLE RESULTS OF ANALYSIS OF DRUG PARAPHENLIAS THE RESULTS; THE SOLUTION OBTAINED FROM WASHING THE DEVICE IS POSITIVE FOR COCAINE, THE SOLUTION OF COCAINE OBTAINED IN THE COURSE OF THESE ANALYSES HAVE BEEN DESTROYED. THERE IS NO CONTROLLED SUBSTANCE THAT WILL SUPPORT A CONVICTION. THE PETITIONER REQUESTS THAT THIS COURT ORDER A IMMEDIATELY RELEASE FROM HIS UNLAWFULL DETENTION AT THE EARLIEST POSSIBLE TIME. BECAUSE THERE IS NO REASON TO HOLD PETITIONER IN JAIL.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ( ) No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (a) At preliminary hearing A. RILEY POWELL 201 EAST TROY STREET, POST OFFICE DRAWER 969 ANDALUSIA AL 36420  
 (b) At arraignment and plea A. RILEY POWELL

- (c) At trial \_\_\_\_\_  
\_\_\_\_\_  
(d) At sentencing \_\_\_\_\_  
\_\_\_\_\_  
(e) On appeal \_\_\_\_\_  
\_\_\_\_\_  
(f) In any post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_  
(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?  
Yes ( ) No ( )

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?  
Yes ( ) No ( )

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  
Yes ( ) No (X)

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare ( or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 7-28-05.  
(date)

Larry Earl Foster  
Signature of Petitioner